

641—69.10(135) Enforcement.

69.10(1) The department may impose a civil penalty pursuant to Iowa Code section 135.105C and this rule or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that a person has committed any of the following acts:

- a.* Failed or refused to comply with any requirements of this chapter.
- b.* Failed or refused to establish, maintain, provide, copy, or permit access to records or reports as required by this chapter.
- c.* Failed or refused to permit entry or inspection as described in subrule 69.9(1).
- d.* Falsified reports and records required by this chapter.
- e.* Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- f.* Failed to respond within 30 days of receipt of communication sent by the department by registered or certified mail.
- g.* Engaged in any conduct that subverts or attempts to subvert a department investigation.
- h.* Failed to comply with a subpoena issued by the department or failed to cooperate with a department investigation.
- i.* Failed to pay costs assessed in any disciplinary action.

69.10(2) Complaints and other requests for action under this rule. Complaints regarding a person who performs renovation, remodeling, or repainting for compensation in target housing shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide the name of the person who performs renovation, remodeling, or repainting for compensation in target housing and the specific details of the person's action(s) that did not comply with the rules.

69.10(3) Civil penalties.

a. Before instituting any proceeding to impose a civil penalty under Iowa Code section 135.105C, the department shall serve a written notice of violation upon the person charged. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation, certification, approval, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the department, if any, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 135.105C.

b. Within 20 days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation. The answer to the notice of violation shall state any facts, explanations, and arguments denying the charges of violation or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

c. If the person charged with a violation fails to answer within the time specified in paragraph 69.10(3) "b," an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph 69.10(3) "a."

d. If the person charged with a violation files an answer to the notice of violation, the department, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within 20 days of the date of the order or other time specified in the order, request a hearing.

e. If the person charged with a violation requests a hearing, the department will issue an order designating the time and place of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

f. If a hearing is held, an order will be issued after the hearing by the presiding officer or the department dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

g. The department may compromise any civil penalty. If the civil penalty is not compromised or is not remitted by the presiding officer or the department or if the time for requesting a hearing described in paragraph 69.10(3) “d” has expired, the department may refer the matter to the attorney general for collection.

h. Except when payment is made after compromise or mitigation by the department of justice or as ordered by a court of the state, following reference of the matter to the attorney general for collection, payment of civil penalties imposed under Iowa Code section 135.105C shall be made by check, draft, or money order payable to the Iowa Department of Public Health.

69.10(4) Appeals.

a. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

b. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075.

c. The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.